fails to establish that the alternatives recited in claim 12 do not share a "similar nature." *See* MPEP §1850(III)(B).

Furthermore, the Office Action fails to allow the Applicants to choose from all of the available alternatives encompassed by claim 12. There are at least three different types of antibodies specifically recited in claim 12, and claim 12 also recites "and mixtures thereof." Therefore, if one is given the option of choosing A, B, C, or a combination thereof, the choices available include:

- A
- B
- C
- A + B
- A + C
- B + C
- A + B + C

However, the Office Action does not allow the Applicants to choose from all of the available options provided for in claim 12.

Furthermore, MPEP §1850(III)(B) also provides:

> When dealing with alternatives, if it can be shown that at least one Markush alternative is not novel over the prior art, the question of unity of invention should be reconsidered by the examiner. Reconsideration does not necessarily imply that an objection of lack of unity shall be raised. (See Examples in Chapter 10 of the International Search and Preliminary Examination Guidelines which can be obtained from the Patent Examiner's Toolkit link or from WIPO's web site (www.wipo.int/pct/en/texts/gdlines.htm.))

Thus, even though the Office Action asserts that the anti-TLR4 antibody known as HTA125 was known in the prior art (Wang et al., Infection and Immunity, 69(4):2402–06 (April 2001)), this does not necessarily establish that there is a lack of unity of invention between all of the alternatives recited in claim 12. Indeed, Wang's disclosure of using HTA125 as a receptor blocker, by itself, does not anticipate nor would have rendered obvious the invention as a whole

of claim 12. Claim 12 is directed to more than just an antibody; instead it is directed to a composition comprising "at least one antibody [that] inhibits the pro-inflammatory cascade induced by the activation of MSRV/HERV-W" and "a pharmaceutically acceptable carrier." Therefore, the Office Action fails to establish that the technical features as a whole do not define a contribution over the prior art.

Second, Applicants respectfully submit that the requirement to elect between multiple sclerosis and schizophrenia is clearly improper under unity of invention practice. Only claims 16 and 17 are directed to a method of treating a pathology. Claim 16 does not recite a Markush group; therefore, because no alternatives are recited in claim 16, there is no lack of unity of invention between the different pathologies.

Furthermore, because claims 12–15 are composition claims, they cannot be said to read on a certain pathology, such as multiple sclerosis or schizophrenia. By requiring the Applicants to choose between specific disorders would mean that at least claims 12–15 would be non-elected claims; thus, such a requirement is effectively a restriction requirement between the composition claims and method of treatment claims using that composition, without even giving the Applicants the opportunity to elect the composition claims over the method of treatment claims. Also, even if the Applicants were given the opportunity to elect between the composition claims and the method of treatment claims, such a restriction requirement would be clearly improper under unity of invention practice for at least the reason that the method of treatment claims require all of the limitations of composition claim 12.

For at least the reasons discussed above, reconsideration and withdrawal of the restriction and election of species requirement are respectfully requested.

Respectfully submitted,

William P. Berridge
Registration No. 30,024

Jeffrey R. Bousquet
Registration No. 57,771

WPB:CSW/jrb

Date: April 17, 2008

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

DEPOSIT ACCOUNT USE AUTHORIZATION
Please grant any extension necessary for entry;
Charge any fee due to our Deposit Account No. 15-0461